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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Pay  
Telephone Reclassification and  
Compensation Provisions of the  
Telecommunications Act of 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 96-128

COMMENTS OF GATEWAY TECHNOLOGIES, INC.

Gateway Technologies, Inc. ("Gateway"), by its attorneys, hereby submits these comments in the above-captioned proceeding.<sup>1</sup> Gateway urges the Commission to reject the proposal of the Inmate Calling Services Providers Coalition ("ICSPC") for a \$0.90 special compensation charge on 0+ calls originating from "inmate only" payphones in correctional institutions. There is no need for "dial around" compensation on inmate phones because all inmate calls are restricted to the presubscribed carrier, which in turn compensates the inmate PSP on a contractually agreed-upon level. The Commission should also reject ICSPC's request for preemption of state imposed-inmate rate caps and affirmatively adopt a rate cap for inmate telecommunications services under Section 276 of the Act.<sup>2</sup>

INTRODUCTION

Gateway, a leading provider of inmate telecommunications services, has actively participated in all of the Commission's proceedings concerning inmate service regulation since 1990,

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<sup>1</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Public Notice* (released May 6, 1999) ("Public Notice").

<sup>2</sup> 47 U.S.C. § 276. See Letter from Glenn B. Manishin, Counsel for Gateway, to William F. Caton, FCC, CC Docket No. 92-77 (May 5, 1995).

including this proceeding<sup>3</sup> and the Billed Party Preference (“BPP”) proceeding.<sup>4</sup> In 1996, Gateway opposed ICSPC’s \$0.90 per-call proposal as inconsistent with the fair compensation provision in Section 276, constituting “double recovery” for inmate payphone providers, who already receive compensation for 0+ calls from the surcharges and per-minute rates applied to collect-only inmate phone calls.

The Commission agreed and, citing Gateway’s comments, held that “mandating a per-call amount for inmate payphones, which do not allow local coin calls, could possibly lead to a double recovery of costs already included in higher-than-average operator service rates and special surcharges.”<sup>5</sup> In its *Order on Reconsideration*, the Commission affirmed this conclusion, finding that since “virtually all calls originated by inmate payphones are 0+ calls, inmate PSPs tend to receive their compensation pursuant to contract, which makes them ineligible to receive a per-call compensation amount.”<sup>6</sup>

Nothing has changed in the last three years to justify amending this decision and provide inmate PSPs with a \$0.90 windfall. Therefore, for the same reasons that Gateway described in its 1996 Comments, the Commission should reject the ICSPC’s \$0.90 compensation mechanism and, as an alternative, adopt Gateway’s proposed rate cap based on the predominant carriers’ inmate surcharge and daytime MTS rates.

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<sup>3</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, FCC 96-254, *Notice of Proposed Rulemaking* (released June 6, 1996) (“NPRM”); FCC 96-439, *Order on Reconsideration* (released November 8, 1996) (“*Reconsideration Order*”).

<sup>4</sup> *Billed Party Preference for 0+ InterLATA Calls*, CC Docket 92-77, *Second Report and Order on Reconsideration*, at ¶ 37 (released January 29, 1998) (citing Gateway Technologies, Inc. Comments at 4).

<sup>5</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, FCC 96-388, *Report and Order*, at ¶ 74 (released September 20, 1996) (“*Report and Order*”).

<sup>6</sup> *Reconsideration Order* at ¶ 72.

I. INMATE SERVICE PROVIDERS DO NOT REQUIRE COMMISSION IMPOSED  
COMPENSATION MECHANISMS UNDER SECTION 276

The Notice seeks comment on ICSPC's proposed \$0.90 payphone charge—on top of their existing 0+ collect surcharge and MTS rates—for inmate service providers.<sup>7</sup> This is the same tired proposal that the IPSC has been pushing for the past three years. As Gateway explained in its 1996 reply comments, the “Coalition’s proposal for a \$0.90 payphone charge—on top of their existing 0+ collect inmate rates—must be rejected for procedural, legal and public policy reasons.”<sup>8</sup> Nothing has changed in the last three years to warrant adoption of this additional compensation. It was wrong in 1996 and it remains wrong today.

According to ICSPC, the Commission’s continued rejection of this proposal violates the “fair compensation” provision in Section 276 of the 1996 Act.<sup>9</sup> In reality, ICSPC’s rate proposal is inconsistent with the principle and rationale behind Section 276. What ICSPC fails to recognize is that Section 276 was not intended to guarantee a supracompetitive margin. Rather, it was designed to provide compensation where it otherwise would not exist. Since inmate PSPs already receive “fair” compensation for 0+ inmate traffic from the commissions paid by the inmate carrier, Section 276 does not support an additional \$0.90 surcharge on inmate service rates.

According to the 1996 Act, Section 276 is designed to “promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public.”<sup>10</sup> In order to achieve this goal, Congress directed the Commission

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<sup>7</sup> *Public Notice* at 1.

<sup>8</sup> Comments of Gateway Technologies, Inc., *In the Matter of the Pay Phone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, at 2 (filed July 15, 1996) (“Gateway Comments”).

<sup>9</sup> *Public Notice* at 2.

<sup>10</sup> 47 U.S.C. § 276(b). “Payphone service” specifically includes “the provision of inmate telephone service in correctional institutions.” 47 U.S.C. § 276(d).

to establish a compensation mechanism that would ensure that all PSPs are “fairly compensated” for the inter- and intrastate calls originating on their payphones.<sup>11</sup>

With this goal in mind, the Commission has appropriately concluded that PSPs should *only* receive compensation for 0+ calls under Section 276 “in the absence of a contract that prescribes a compensation methodology.”<sup>12</sup> In other words, to the extent that PSPs are compensated from the operator service provider (“OSP”) carrying the traffic originating on their payphones, they are not entitled to the fair compensation mechanism under Section 276. Congress determined that a compensation mechanism was necessary to promote competition and encourage the deployment and widespread availability of payphones. If PSPs are already fairly compensated through their commission-based contracts with OSPs, then the application of a fair compensation package is not necessary to achieve the goals of the statute.

The one instance when PSPs are not already fairly compensated from the OSP carrying the traffic is when the originator of the call dials around the presubscribed OSP, by dialing an access number to select another carrier or an 800 number. Because the PSP does not receive revenue for handling “dial around” traffic—such as “800” calls and calls to non-presubscribed OSPs—Congress enacted Section 276 to require the Commission to provide a regulatory solution ensuring PSPs fair compensation.<sup>13</sup>

“Fair compensation” under Section 276 in the prison environment therefore does not justify application of any mandated regulatory fee because “dial around” does not, and cannot, exist. In the inmate telecommunications market, security and fraud prevention concerns dictate that all inmate traffic is handled on a 0+ basis, with the preselected inmate service provider serving as the exclusive carrier for that traffic. As Gateway explained in its 1996 comments,

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<sup>11</sup> 47 U.S.C. §276(b)(1).

<sup>12</sup> *Reconsideration Order* at ¶ 52.

“providing inmates with ‘dial around’ capability would invite a ‘tidal wave’ of toll fraud jeopardizing both public and inmate security.”<sup>14</sup> Since the inmate service provider is the only 0+ carrier for a particular correctional facility, dial around simply does not exist in the inmate services context.

There is also no situation in which inmate pay phones are installed or used in the absence of a voluntary agreement as to compensation. Under the current industry practice, inmate PSPs do not provide phones directly to correctional facilities. Instead, inmate PSPs either (i) operate as both the payphone provider and the exclusive carrier, or (ii) contract with the exclusive carrier in providing service to a particular correctional institution. Just as the PSPs are adequately compensated on 0+ traffic through their commission contracts with OSPs, inmate PSPs are fairly compensated under either their contracts with the presubscribed inmate carrier or, where firms like Gateway provide both the payphone and the service, the PSP is compensated under its private contract with the correctional facility. In both instances, the PSP has affirmatively agreed to compensation for use of its payphones, either from its own telecommunications service revenues or from a joint venture with a carrier in order to bid on the applicable RFP.

Virtually all of the RFPs with which Gateway is familiar place strict limitations on the rates that inmate providers may charge. Like other inmate service providers, Gateway voluntarily bids on these contracts. If a PSP and/or carrier is not satisfied with the compensation arrangements under a particular RFP, then that firm should not bid on the RFP. The important point is that under either scenario, the inmate PSP is adequately compensated and there is no need for payphone providers to get an extra \$0.90. In fact, as Gateway explained, and the Commission found in 1996, an additional \$0.90 would constitute double recovery and was not in-

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<sup>13</sup> *Reconsideration Order* at ¶ 1.

<sup>14</sup> *Gateway Comments* at 7. *Reconsideration Order* at ¶ 12.

tended under Section 276.<sup>15</sup> Congress did not intend for carriers to use Section 276 as a profit “safe harbor” in providing inmate telephone service. Accordingly, the ICSPC’s reliance on Section 276 of the Act to support its inmate compensation proposal is without merit and should be rejected by the Commission.

## II. STATE RATE CAPS DO NOT JUSTIFY AN FCC-IMPOSED COMPENSATION MECHANISM

ICSPC also argues that the Commission should preempt state inmate services rate regulation on the ground that state rate caps deny inmate carriers the ability to earn fair compensation.<sup>16</sup> The Commission should not use Section 276 to preempt state rate caps because there is absolutely no support for ICSPC’s contention that these limits require them to lose money on intrastate calls from inmate payphones.

First, no one has presented any proof that state rate caps deny inmate carriers fair compensation. Gateway and others have been able to successfully operate, earning a fair profit, under these same rate caps. In fact, Gateway has recently proposed that the Kentucky Public Service Commission adopt a state rate cap. ICSPC first presented its \$0.90 proposal three years ago; its members have continued to operate since then, effectively disproving their inability to earn fair compensation. More importantly, if the ICSPC members are in fact unable to earn reasonable compensation under these state rate caps, they should respond to market pressures and minimize their costs and increase their efficiencies, like any other competitive provider.

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<sup>15</sup> *Gateway Comments* at 5.

<sup>16</sup> *Public Notice* at 1,2. Comments of the Inmate Calling Services Providers Coalition, *In the Matter of the Pay Phone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, at 2-5 (filed July 1, 1996) (“*ICSPC Comments*”).

Second, most of the correctional facilities with which Gateway is familiar impose inmate service rate caps in their RFPs. These rate caps are traditionally based on the dominant carrier's surcharge and MTS rates for inmate collect calling. To the extent that a rate cap is imposed directly by the correctional facility as part of its RFP, market forces will dictate whether the terms of the RFP are reasonable and provide fair compensation. If the RFP does not provide the opportunity for fair compensation, then carriers will not bid on the contract and the correctional facility will have to amend its RFP if it wants telephone services for its inmates.

Third, there is no legitimate policy basis to preempt state-imposed inmate service rate caps. The current market structure in inmate services is based primarily on competition for payment of commissions to correctional institutions, rather than competition on efficiency and rates. By adopting ICSPC's proposed preemption of state rate caps or alternative \$0.90 proposal, the Commission would eliminate any incentive for carriers to streamline their costs and increase their efficiencies. Retail rates for inmate services are more than compensatory at current levels, including rate caps, and do not need to be increased further by regulatory fiat. If anything, the Commission should consider increasing incentives for carrier efficiency by placing "cap" limits on all inmate calls under its Section 276 authority.

### III. ANY COMMISSION INMATE RATE REGULATION SHOULD MIRROR THE LARGEST INTERSTATE CARRIERS' INMATE SURCHARGE AND MTS RATES

If the Commission believes that inmate rate regulation is necessary, it should reject any "safe-harbor" compensation mechanisms under Section 276 and adopt Gateway's aggressive proposal to cap inmate service rates at the level of the largest inmate OSPs. Under this approach, first proposed by Gateway in 1995, inmate service providers would charge the average surcharge and MTS rates charged by the largest three interstate carriers. These averaged rates would provide a proper "rate surrogate" imposing healthy incentives for all inmate carriers to match the

efficiencies of the predominant carriers. Most importantly, Gateway's proposal avoids the "safe-harbor" profit guarantee that is incorporated into the ICSPC proposal, infusing the inmate services market with at least some additional incentives for efficiency enhancing and rate reducing competition.

#### CONCLUSION

For all these reasons, the Commission should reject ICSPC's suggested \$0.90 per-call inmate payphone surcharge and should not preempt state-imposed inmate service rate caps. If anything, the Commission should adopt Gateway's progressive rate cap based on the largest interstate carriers' inmate surcharge and MTS rates.

Respectfully submitted,

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Dated: June 21, 1999



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